IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.358 OF 2006

Shri Dilip Wamanrao Shinde,)
Aged about 25 years,)
Occupation Agriculture,)
Resident of Owli, Deulwadi,)
Taluka Chiplun,)
District Ratnagiri) ...Applicant

Vs.

State of Maharashtra) ...Respondent

Shri S.V.Kotwal with Shri S.S. Desai for the Applicant.

Shri Y.M. Nakhwa, A.P.P for the State.

CORAM : ABHAY S. OKA, J.

DATE : OCTOBER 18, 2006.

JUDGMENT:

1. Submissions of the learned counsel appearing for the parties were heard on the last date. The Applicant has been convicted for offences under section 451 and 354 of the Indian Penal Code. The substantive sentence is of five months. He has been directed to pay fine of Rs.2,000/-.

2. The complainant resides in village Owali with her parents and grand-parents alongwith brothers and sisters. The complainant used to go to the field of her father. On 20th December, 2001 at 08.00 a.m she

went to the field of her father. At about 3.30 p.m the complainant was sitting on a cot after taking lunch. At that time the accused-Applicant came near the complainant and asked water from her. Though the complainant denied to give water, the Applicant persisted that she should give water. Therefore, the complainant went inside hut to bring the water from the pot. The Applicant followed her and committed the offence complained of. The learned Magistrate held that the offence was established and in Appeal the conviction and sentence has been confirmed.

3. I have heard learned counsel appearing for the Applicant. He submitted that admittedly there was enmity between the members of the community to which prosecutrix belonged and the members of community of the accused. He submitted that there was unexplained delay in filing F.I.R. There were deliberations between the father of the prosecutrix and one Shankar who was a leader of the community. He submitted that it was unsafe to rely upon uncorroborated testimony of the prosecutrix. he submitted that the judgment of the Trial Court discloses that the Trial Court had read the statements of the witnesses recorded by the police. He pointed out that one Sahi Babu Shelke who was infact an eye-witness was not examined by the

prosecution. He pointed out that the Appellate Court has referred to his statement recorded by the police and has come to the conclusion that he was not an eye-witness. He submitted that it was unsafe to rely upon the testimony of the prosecutrix.

4. The learned A.P.P invited my attention to the findings recorded by the courts below and submitted that no interference was called for in revision.

5. It must be borne in mind that scope of interference in Revision Application under section 401 of the Code of Criminal Procedure is very limited. This court cannot re-appreciate the evidence. The entire case will have to be considered in the context of the law laid down by the Apex Court in the case of **State of Punjab Vs.Gurmit Singh and others (1996(2) Supreme Court Cases Page 384)**. The Apex Court held that the testimony of a victim in case of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the court should find no difficulty to act on testimony of a victim of sexual assault and to convict the accused. The Apex Court held that seeking corroboration of the statement of prosecutrix amounts to adding insult to the injury. The Apex Court held

that the victim cannot be treated on par with an accomplice.

6. It will be necessary to refer to the evidence of the prosecutrix which reads thus:

> "2. The incident took place on 20/12/2001 at about 3.30 p.m in dark hut at Chikhlawni. I had gone there to guard the vegetables which we had planted. At about 8.00 a.m. I had gone there. At the time of incident I was sitting on wooden cot before the hut. The accused came near the cot at 3.30 p.m and demanded water. I told him that I am not in a position to give him water personally. But the accused insisted me to give water. Hence, I went in the hut. While I was taking the water from the pot, the accused embrassed me from backside. He pressed my breast with his both hands. He quashed me in the corner in hut. I asked him to leave me, but the accused did not left me. I told him that if he doesn't left me, then I will tell his name to parents. But the accused caught hold and pressed me by his one hand. With his second he taken up my gaoon which was on my person.

> Then he removed my underwear by his one hand. However, when he saw that I was carrying M.C., the accused left me. Then the accused went away. I was waiting in the hut of returning of my parents to the hut who had gone to cut the grass. But as they were not coming there till the evenings hence at 7.00 p.m I went to my house. I intervened the incident to my parents as well as to my grand-father and grand-mother. Then my father on the next day went to my cousin maternal uncle's house at Chiplun and he informed the incident to my cousin maternal uncle. My father returned from Chiplun at 10.00 a.m".

Perusal of the examination-in-chief and cross-examination of the victim shows that her evidence is natural and is hardly shaken in the cross-examination. The F.I.R has been registered next day in the morning. The prosecutrix herself has given reasons for delay in recording F.I.R. She has stated that she waited for her parents to come back. She stated that she narrated the incident to her parents as well as to her grand-parents. On the next day her grand-father talked to the other members of the family and thereafter the complaint was filed. In case of

offence like this, it is difficult to find fault with delay in recording F.I.R. The delay has been adequately explained.

7. It is very difficult to believe that 18 years old prosecutrix will come before the court and depose falsely to the aforesaid facts. The courts below have accepted the testimony of the prosecutrix. It is difficult to find fault with order of conviction on the ground that alleged eye-witness has not been examined. Minor discrepancies and contradictions will not help the Applicant once the testimony of the prosecutrix is accepted. It is not possible to find fault with the concurrent findings of the courts below. There is no merit in the Revision Application. Application is rejected.

8. Time is granted to the Applicant to surrender till 09th November, 2006.

JUDGE